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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/573,787

03/28/2006

Andre Chojnacki

127563

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03/31/2009

OLIFF & BERRIDGE, PLC

P.O. BOX 320850

ALEXANDRIA, VA 22320-4850

EXAMINER

GORDON, BRIAN R

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/573,787	<b>Applicant(s)</b> CHOJNACKI ET AL.	
	<b>Examiner</b> Brian R. Gordon	<b>Art Unit</b> 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 7-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☒ Certified copies of the priority documents have been received in Application No. PCT/FR04/02593.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 7-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claim 7 in line 5, it is unclear what is meant by the phrase "of the pipette, appliance wherein the head.....". It is unclear if applicant is referencing the mixing appliance or some other appliance.

Furthermore is it unclear where, how, and to what the head supporting block is mounted. Is it mounted within the mixing appliance and to some other element thereof?

Each of dependent claims 8-12, state "Appliance according...", it is unclear if applicant is referencing the mixing appliance of claim 1.

As to claim 8, there is no antecedent basis for "the axis of the actuating unit". Furthermore it is unclear which element is referenced by the pronoun "its".

As to claim 9, there is no antecedent basis for "the axis of the eccentric block.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilmes et al. US 6,447,728 in view of Kido et al. US 4,869,114.

An exchangeable oscillating pipette needle (4) for an automatic analyzer for examining biological body fluids. The needle is mounted in a holder (1) includes an oscillating arm and passes through a guiding block as seen in figure 5. The device includes a drive motor with an eccentrically rotating shaft 6 and a drive fork 7 in which the eccentric shaft 6 is engaged for the purpose of generating oscillations.

Wilmes et al. discloses the invention as claimed except for the supporting block being mounted to rotate perpendicular to the plane in which the pipette oscillates.

Kido et al. discloses a liquid depositing device 10 of the embodiment shown in FIGS. 1 and 2, the second pulse motor 53 is first driven to swing the arm 20 upward (clockwise) about the pin 22a to a sucking position shown by the chained line in FIG. 1. In the sucking position, a new tip 15 is mounted on the tip mounting portion 22b. Then a sample container 8 with sample liquid 9 therein is manually brought and placed so that the lower end portion of the depositing tip is dipped into the sample liquid 9. Then the first pulse motor 34 is driven to move the piston 31 by a predetermined distance to the rear (to the right in FIG. 1), thereby sucking a predetermined quantity of the sample liquid 9 into the inner space 15b of the depositing tip 15. Then the second pulse motor 53 is driven to return the arm 20 to the discharging position, the lower position shown in FIG. 1. The arm 20 is temporarily stopped at this position. The distance between the discharging position and the depositing position is determined by the number of pulses sent by the controller 40 to motor 53, and the speed at which the depositing tip 15 is moved down depends on the interval of time between consecutive pulses sent to the motor 53. In accordance with the present invention, the speed at which the depositing tip is moved down is less than 40 mm/sec.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Wilmes such that the needle can also rotate in the perpendicular plane to the oscillation plane of the needle as taught by Kido to allow for the needle to move from discharging and suction positions.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fagerstam; Terada; Kunio; Jones; Ronald L. and Sisti; Giorgio et al. disclose rotating dispensing devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian R. Gordon whose telephone number is 571-272-1258. The examiner can normally be reached on M-F, 1st Fri. Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brian R Gordon/  
Primary Examiner  
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